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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NATIONAL SPECIALTY PHARMACY,
LLC,

Plaintiff,

v.

SAMEER PADHYE, an individual,
BENJAMIN D. BROWN, an individual, and
DOES 1 to 49, inclusive,

Defendant.

Case No. E-5:23-cv-04357-PCP

[PROPOSED] STIPULATED
PROTECTIVE ORDER FOR
LITIGATION INVOLVING PATENTS,
HIGHLY SENSITIVE CONFIDENTIAL
INFORMATION AND/OR TRADE
SECRETS

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

1 2. **DEFINITIONS**

2 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
3 information or items under this Order.

4 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
5 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
6 Civil Procedure 26(c).

7 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
8 as their support staff).

9 2.4 ~~[Optional: Designated House Counsel: House Counsel who seek access to “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.]~~

11 2.5~~2.4~~ Designating Party: a Party or Non-Party that designates information or items that it
12 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”~~[Optional: or “HIGHLY CONFIDENTIAL
14 SOURCE CODE”]~~.”

15 2.6~~5~~ Disclosure or Discovery Material: all items or information, regardless of the medium
16 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
17 transcripts, and tangible things), that are produced or generated in disclosures or responses to
18 discovery in this matter.

19 2.7~~6~~ Expert: a person with specialized knowledge or experience in a matter pertinent to
20 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as
21 a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s competitor,
22 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s
23 competitor.

24 2.8~~7~~ “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
25 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another Party
26 or Non-Party would create a substantial risk of serious harm that could not be avoided by less
27 restrictive means.

28 2.9 ~~[Optional: “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:~~

1 extremely sensitive “Confidential Information or Items” representing computer code and associated
2 comments and revision histories, formulas, engineering specifications, or schematics that define or
3 otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of
4 which to another Party or Non-Party would create a substantial risk of serious harm that could not be
5 avoided by less restrictive means.]

6 2.10 House Counsel: attorneys who are employees of a party to this action. House Counsel does
7 not include Outside Counsel of Record or any other outside counsel.

8 2.11^{2.8} Non-Party: any natural person, partnership, corporation, association, or other legal
9 entity not named as a Party to this action.

10 2.12⁹ Outside Counsel of Record: attorneys who are not employees of a party to this action
11 but are retained to represent or advise a party to this action and have appeared in this action on
12 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

13 2.13¹⁰ Party: any party to this action, including all of its officers, directors, employees,
14 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

15 2.14¹¹ Producing Party: a Party or Non-Party that produces Disclosure or Discovery
16 Material in this action.

17 2.15¹² Professional Vendors: persons or entities that provide litigation support services
18 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
19 storing, or retrieving data in any form or medium) and their employees and subcontractors.

20 2.16¹³ Protected Material: any Disclosure or Discovery Material that is designated as
21 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
22 [Optional: or as “HIGHLY CONFIDENTIAL SOURCE CODE.”]

23 2.17¹⁴ Receiving Party: a Party that receives Disclosure or Discovery Material from a
24 Producing Party.

25 3. **SCOPE**

26 The protections conferred by this Stipulation and Order cover not only Protected Material
27 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all
28 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,

1 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
2 However, the protections conferred by this Stipulation and Order do not cover the following
3 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
4 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
5 publication not involving a violation of this Order, including becoming part of the public record
6 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
7 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
8 information lawfully and under no obligation of confidentiality to the Designating Party. Any use
9 of Protected Material at trial shall be governed by a separate agreement or order.

10 **4. DURATION**

11 Even after final disposition of this litigation, the confidentiality obligations imposed by this
12 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
13 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
14 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
15 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
16 time limits for filing any motions or applications for extension of time pursuant to applicable law.

17 **5. DESIGNATING PROTECTED MATERIAL**

18 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
19 Non-Party that designates information or items for protection under this Order must take care to
20 limit any such designation to specific material that qualifies under the appropriate standards. To the
21 extent it is practical to do so, the Designating Party must designate for protection only those parts
22 of material, documents, items, or oral or written communications that qualify – so that other portions
23 of the material, documents, items, or communications for which protection is not warranted are not
24 swept unjustifiably within the ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
26 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
27 encumber or retard the case development process or to impose unnecessary expenses and burdens
28 on other parties) expose the Designating Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that it designated for
2 protection do not qualify for protection at all or do not qualify for the level of protection initially
3 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
4 mistaken designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
6 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
7 Discovery

8 Material that qualifies for protection under this Order must be clearly so designated before
9 the material is disclosed or produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
12 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the
13 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
14 [Optional: or "HIGHLY CONFIDENTIAL – SOURCE CODE"] to each page that contains protected
15 material. If only a portion or portions of the material on a page qualifies for protection, the Producing
16 Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in
17 the margins) and must specify, for each portion, the level of protection being asserted.

18 A Party or Non-Party that makes original documents or materials available for inspection
19 need not designate them for protection until after the inspecting Party has indicated which material
20 it would like copied and produced. During the inspection and before the designation, all of the
21 material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
22 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
23 copied and produced, the Producing Party must determine which documents, or portions thereof,
24 qualify for protection under this Order. Then, before producing the specified documents, the
25 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
26 CONFIDENTIAL – ATTORNEYS' EYES ONLY""[Optional: or "HIGHLY CONFIDENTIAL –
27 SOURCE CODE"]) to each page that contains Protected Material. If only a portion or portions of
28 the material on a page qualifies for protection, the Producing Party also must clearly identify the

1 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
2 each portion, the level of protection being asserted.

3 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
4 Designating Party identify on the record, before the close of the deposition, hearing, or other
5 proceeding, all protected testimony and specify the level of protection being asserted. When it is
6 impractical to identify separately each portion of testimony that is entitled to protection and it
7 appears that substantial portions of the testimony may qualify for protection, the Designating Party
8 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
9 to have up to 21 days to identify the specific portions of the testimony as to which protection is
10 sought and to specify the level of protection being asserted. Only those portions of the testimony
11 that are appropriately designated for protection within the 21 days shall be covered by the provisions
12 of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition
13 or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be
14 treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

15 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
16 other proceeding to include Protected Material so that the other parties can ensure that only
17 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
18 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
19 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
20 – ATTORNEYS’ EYES ONLY.”

21 Transcripts containing Protected Material shall have an obvious legend on the title page that
22 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
23 (including line numbers as appropriate) that have been designated as Protected Material and the
24 level of protection being asserted by the Designating Party. The Designating Party shall inform the
25 court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-
26 day period for designation shall be treated during that period as if it had been designated “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After
28 the expiration of that period, the transcript shall be treated only as actually designated.

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
9 designate qualified information or items does not, standing alone, waive the Designating Party's
10 right to secure protection under this Order for such material. Upon timely correction of a
11 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
12 in accordance with the provisions of this Order.

13 | P a g e | 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
15 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
16 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
17 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
18 challenge a confidentiality designation by electing not to mount a challenge promptly after the
19 original designation is disclosed.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
21 by providing written notice of each designation it is challenging and describing the basis for each
22 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
23 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
24 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
25 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
26 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
27 Party must explain the basis for its belief that the confidentiality designation was not proper and
28 must give the Designating Party an opportunity to review the designated material, to reconsider the

1 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
2 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
3 has engaged in this meet and confer process first or establishes that the Designating Party is
4 unwilling to participate in the meet and confer process in a timely manner.

5 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
6 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
7 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
8 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
9 will not resolve their dispute, whichever is earlier.¹ Each such motion must be accompanied by a
10 competent declaration affirming that the movant has complied with the meet and confer
11 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
12 motion including the required declaration within 21 days (or 14 days, if applicable) shall
13 automatically waive the confidentiality designation for each challenged designation. In addition, the
14 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
15 good cause for doing so, including a challenge to the designation of a deposition transcript or any
16 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
17 competent declaration affirming that the movant has complied with the meet and confer
18 requirements imposed by the preceding paragraph.

19 The burden of persuasion in any such challenge proceeding shall be on the Designating
20 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
21 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
22 Unless the Designating Party has waived the confidentiality designation by failing to file a motion
23 to retain confidentiality as described above, all parties shall continue to afford the material in
24 question the level of protection to which it is entitled under the Producing Party's designation until
25 the court rules on the challenge.

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¹Alternative: It may be appropriate in certain circumstances for the parties to agree to shift the burden to move on the Challenging Party after a certain number of challenges are made to avoid an abuse of the process. The burden of persuasion would remain on the Designating Party.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

1 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
2 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
3 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
4 the categories of persons and under the conditions described in this Order. When the litigation has
5 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
6 DISPOSITION).

7 Protected Material must be stored and maintained by a Receiving Party at a location and in
8 a secure manner² that ensures that access is limited to the persons authorized under this Order.

9 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
10 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
11 information or item designated “CONFIDENTIAL” only to:

12 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
13 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
14 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is
15 attached hereto as Exhibit A;

16 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party
17 to whom disclosure is reasonably necessary for this litigation and who have signed the
18 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
20 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be
21 Bound” (Exhibit A);

22 (d) the court and its personnel;

23 (e) court reporters and their staff, professional jury or trial consultants, and Professional
24 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

27

28 ² It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected
Material in password-protected form.

1 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
2 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
3 **unless otherwise agreed by the Designating Party or ordered by the court.** Pages of transcribed
4 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
5 bound by the court reporter and may not be disclosed to anyone except as permitted under this
6 Stipulated Protective Order.

7 (g) the author or recipient of a document containing the information or a custodian or other
8 person who otherwise possessed or knew the information.

9 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” *[Optional: and*
10 ~~“HIGHLY CONFIDENTIAL – SOURCE CODE”]~~ Information or Items. Unless otherwise ordered by
11 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
12 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
13 *[Optional: or “HIGHLY CONFIDENTIAL – SOURCE CODE”]* only to:

³ It may be appropriate under certain circumstances to limit the number of Designated House Counsel who may access **“HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY”** information under this provision.

⁴ This Order contemplates that Designated House Counsel shall not have access to any information or items designated “HIGHLY CONFIDENTIAL – SOURCE CODE.” It may also be appropriate under certain circumstances to limit how Designated House Counsel may access “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information. For example, Designated House Counsel may be limited to viewing “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information only if it is filed with the court under seal, or in the presence of Outside Counsel of Record at their offices.

1 (eb) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
 2 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
 3 and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed];

4 (dc) the court and its personnel;

5 (ed) court reporters and their staff, professional jury or trial consultants,⁵ and Professional
 6 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
 7 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

8 (fe) the author or recipient of a document containing the information or a custodian or other
 9 person who otherwise possessed or knew the information.

10 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
 11 ATTORNEYS’ EYES ONLY” [Optional: or “HIGHLY CONFIDENTIAL – SOURCE CODE”]
 12 Information or Items to Designated House Counsel⁶ or Experts.⁷

13 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party,
 14 a Party that seeks to disclose to Designated House Counsel any information or item that has been
 15 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph
 16 7.3(b) first must make a written request to the Designating Party that (1) sets forth the full name of
 17 the Designated House Counsel and the city and state of his or her residence, and (2) describes the
 18 Designated House Counsel’s current and reasonably foreseeable future primary job duties and
 19 responsibilities in sufficient detail to determine if House Counsel is involved, or may become
 20 involved, in any competitive decision-making.⁸

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 22 ⁵ *Alternative:* The parties may wish to allow disclosure of information not only to professional jury or trial
 23 consultants, but also to mock jurors, to further trial preparation. In that situation, the parties may wish to draft a
 24 simplified, precisely tailored Undertaking for mock jurors to sign.

25 ⁶ *Alternative:* The parties may exchange names of a certain number of Designated House Counsel instead of following
 26 this procedure.

27 ⁷ *Alternative:* “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or
 28 items may be disclosed to an Expert without disclosure of the identity of the Expert as long as the Expert is not a
 29 current officer, director, or employee of a competitor of a Party or anticipated to become one.

⁸ It may be appropriate in certain circumstances to require any Designated House Counsel who receives “HIGHLY
 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information pursuant to this Order to disclose any relevant
 changes in job duties or responsibilities prior to final disposition of the litigation to allow the Designating Party to
 evaluate any later arising competitive decision-making responsibilities.

(a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” ~~[Optional: or “HIGHLY CONFIDENTIAL – SOURCE CODE”]~~ pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” ~~[Optional: or “HIGHLY CONFIDENTIAL – SOURCE CODE”]~~ information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,⁹ and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.¹⁰

(b) A Party that makes a request and provides the information specified in the preceding respective paragraphs may disclose the subject Protected Material to the identified Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no agreement is reached, the Party seeking to make

⁹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

¹⁰ It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to the termination of the litigation that could foreseeably result in an improper use of the Designating Party’s “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information.

1 the disclosure to Designated House Counsel or the Expert may file a motion as provided in Civil
 2 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from
 3 the court to do so. Any such motion must describe the circumstances with specificity, set forth in
 4 detail the reasons why the disclosure to Designated House Counsel or the Expert is reasonably
 5 necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means
 6 that could be used to reduce that risk. In addition, any such motion must be accompanied by a
 7 competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the
 8 extent and the content of the meet and confer discussions) and setting forth the reasons advanced by
 9 the Designating Party for its refusal to approve the disclosure.

10 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the
 11 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under
 12 the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material
 13 to its Designated House Counsel or Expert.

14 **8. PROSECUTION BAR [OPTIONAL]**

15 ~~Absent written consent from the Producing Party, any individual who receives access to “HIGHLY~~
 16 ~~CONFIDENTIAL ATTORNEYS’ EYES ONLY” [Optional: or “HIGHLY CONFIDENTIAL~~
 17 ~~SOURCE CODE”] information shall not be involved in the prosecution of patents or patent applications~~
 18 ~~relating to [insert subject matter of the invention and of highly confidential technical information to be~~
 19 ~~produced], including without limitation the patents asserted in this action and any patent or application~~
 20 ~~claiming priority to or otherwise related to the patents asserted in this action, before any foreign or~~
 21 ~~domestic agency, including the United States Patent and Trademark Office (“the Patent Office”).¹¹ For~~
 22 ~~purposes of this paragraph, “prosecution” includes directly or indirectly drafting, amending, advising, or~~
 23 ~~otherwise affecting the scope or maintenance of patent claims.¹² To avoid any doubt, “prosecution” as used~~
 24 ~~in this paragraph does not include representing a party challenging a patent before a domestic or foreign~~
 25 ~~agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes*~~

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 27 ¹¹ It may be appropriate under certain circumstances to require Outside and House Counsel who receive access to
 28 “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY” information to implement an “Ethical Wall.”

¹² Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

1 reexamination). This Prosecution Bar shall begin when access to “~~HIGHLY CONFIDENTIAL~~
 2 ~~ATTORNEYS’ EYES ONLY~~” [Optional: or “~~HIGHLY CONFIDENTIAL SOURCE CODE~~”]
 3 information is first received by the affected individual and shall end two (2) years after final termination of
 4 this action.¹³

5 9. SOURCE CODE [OPTIONAL]

6 (a) To the extent production of source code becomes necessary in this case, a Producing Party
 7 may designate source code as “~~HIGHLY CONFIDENTIAL SOURCE CODE~~” if it comprises or includes
 8 confidential, proprietary or trade secret source code.

9 (b) Protected Material designated as “~~HIGHLY CONFIDENTIAL SOURCE CODE~~” shall
 10 be subject to all of the protections afforded to “~~HIGHLY CONFIDENTIAL SOURCE CODE~~” shall be
 11 subject to all of the protections afforded to “~~HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY~~”
 12 information [Optional: including the Prosecution Bar set forth in Paragraph 8], and may be disclosed only
 13 to the individuals to whom “~~HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY~~” information
 14 may be disclosed, as set forth in Paragraphs 7.3 and 7.4, with the exception of Designated House
 15 Counsel.¹⁴

16 (c) Any source code produced in discovery shall be made available for inspection, in a format
 17 allowing it to be reasonably reviewed and searched, during normal business hours or at other mutually
 18 agreeable times, at an office of the Producing Party’s counsel or another mutually agreed upon location.¹⁵
 19 The source code shall be made available for inspection on a secured computer in a secured room without
 20 Internet access or network access to other computers, and the Receiving Party shall not copy, remove, or

22 ¹³ Alternative: It may be appropriate for the Prosecution Bar to apply only to individuals who receive access to another
 23 party’s “~~HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY~~” technical or source code information pursuant
 24 to this Order, such as under circumstances where one or more parties is not expected to produce “~~HIGHLY~~
~~CONFIDENTIAL ATTORNEYS’ EYES ONLY~~” information that is technical in nature or “~~HIGHLY~~
~~CONFIDENTIAL SOURCE CODE~~” information.

25 ¹⁴ It may be appropriate under certain circumstances to allow House Counsel access to derivative materials including
 26 “~~HIGHLY CONFIDENTIAL SOURCE CODE~~” information, such as exhibits to motions or expert reports,

27 ¹⁵ Alternative: Any source code produced in discovery shall be made available for inspection in a format through
 28 which it could be reasonably reviewed and searched during normal business hours or other mutually agreeable times
 at a location that is reasonably convenient for the Receiving Party and any experts to whom the source code may be
 disclosed. This alternative may be appropriate if the Producing Party and/or its counsel are located in a different
 jurisdiction than counsel and/or experts for the Receiving Party.

1 otherwise transfer any portion of the source code onto any recordable media or recordable device. The
 2 Producing Party may visually monitor the activities of the Receiving Party's representatives during any
 3 source code review, but only to ensure that there is no unauthorized recording, copying, or transmission of
 4 the source code.¹⁶

5 (d) The Receiving Party may request paper copies of limited portions of source code that are
 6 reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers, or for
 7 deposition or trial, but shall not request paper copies for the purposes of reviewing the source code other
 8 than electronically as set forth in paragraph (e) in the first instance. The Producing Party shall provide all
 9 such source code in paper form including bates numbers and the label "HIGHLY CONFIDENTIAL
 10 SOURCE CODE." The Producing Party may challenge the amount of source code requested in hard copy
 11 form pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the
 12 Producing Party is the "Challenging Party" and the Receiving Party is the "Designating Party" for purposes
 13 of dispute resolution.

14 (e) The Receiving Party shall maintain a record of any individual who has inspected any
 15 portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper copies
 16 of any printed portions of the source code in a secured, locked area. The Receiving Party shall not create
 17 any electronic or other images of the paper copies and shall not convert any of the information contained in
 18 the paper copies into any electronic format. The Receiving Party shall only make additional paper copies if
 19 such additional copies are (1) necessary to prepare court filings, pleadings, or other papers (including a
 20 testifying expert's expert report), (2) necessary for deposition, or (3) otherwise necessary for the
 21 preparation of its case. Any paper copies used during a deposition shall be retrieved by the Producing Party
 22 at the end of each day and must not be given to or left with a court reporter or any other unauthorized
 23 individual.¹⁷

24
 25 ¹⁶ It may be appropriate under certain circumstances to require the Receiving Party to keep a paper log indicating the
 26 names of any individuals inspecting the source code and dates and times of inspection, and the names of any
 27 individuals to whom paper copies of portions of source code are provided.
 28

¹⁷ The nature of the source code at issue in a particular case may warrant additional protections or restrictions. For
 example, it may be appropriate under certain circumstances to require the Receiving Party to provide notice to the
 Producing Party before including "HIGHLY CONFIDENTIAL SOURCE CODE" information in a court filing,
 pleading, or expert report.

**10.8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” ~~[Optional: or “HIGHLY CONFIDENTIAL SOURCE CODE”]~~ that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.¹⁸

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” ~~[Optional: or “HIGHLY CONFIDENTIAL SOURCE CODE”]~~ before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

**11.9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” ~~[Optional: or “HIGHLY CONFIDENTIAL SOURCE CODE”]~~.

¹⁸ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

1 Such information produced by Non-Parties in connection with this litigation is protected by the
2 remedies and relief provided by this Order. Nothing in these provisions should be construed as
3 prohibiting a Non-Party from seeking additional protections.

4 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
5 Party's confidential information in its possession, and the Party is subject to an agreement with the
6 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

7 1. promptly notify in writing the Requesting Party and the Non-Party that some
8 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

9 2. promptly provide the Non-Party with a copy of the Stipulated Protective
10 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
11 the information requested; and

12 3. make the information requested available for inspection by the Non-Party.

13 (c) If the Non-Party fails to object or seek a protective order from this court within 14
14 days of receiving the notice and accompanying information, the Receiving Party may produce the
15 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
16 seeks a protective order, the Receiving Party shall not produce any information in its possession or
17 control that is subject to the confidentiality agreement with the Non-Party before a determination
18 by the court.¹⁹ Absent a court order to the contrary, the Non-Party shall bear the burden and expense
19 of seeking protection in this court of its Protected Material.

20 **12.10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
22 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
23 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
24 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
25 inform the person or persons to whom unauthorized disclosures were made of all the terms of this

26
27
28 ¹⁹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-
Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
2 Be Bound” that is attached hereto as Exhibit A.

3 **13.11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
4 **PROTECTED MATERIAL**

5 When a Producing Party gives notice to Receiving Parties that certain inadvertently
6 produced material is subject to a claim of privilege or other protection, the obligations of the
7 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).²⁰ This provision
8 is not intended to modify whatever procedure may be established in an e-discovery order that
9 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d)
10 and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or
11 information covered by the attorney-client privilege or work product protection, the parties may
12 incorporate their agreement in the stipulated protective order submitted to the court.

12 **14.12. MISCELLANEOUS**

13 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
14 its modification by the court in the future.

15 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
16 no Party waives any right it otherwise would have to object to disclosing or producing any
17 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
18 Party waives any right to object on any ground to use in evidence of any of the material covered by
19 this Protective Order.

20 14.3 [Optional: Export Control. Disclosure of Protected Material shall be subject to all
21 applicable laws and regulations relating to the export of technical data contained in such Protected

22
23 ²⁰ Alternative: The parties may agree that the recipient of an inadvertent production may not “sequester” or in any way
24 use the document(s) pending resolution of a challenge to the claim of privilege or other protection to the extent it
25 would be otherwise allowed by Federal Rule of Civil Procedure 26(b)(5)(B) as amended in 2006. This could include a
restriction against “presenting” the document(s) to the court to challenge the privilege claim as may otherwise be
allowed under Rule 26(b)(5)(B) subject to ethical obligations.

26 An alternate provision could state: “If information is produced in discovery that is subject to a claim of privilege or of
27 protection as trial preparation material, the party making the claim may notify any party that received the information
of the claim and the basis for it. After being notified, a party must promptly return or destroy the specified information
and any copies it has and may not sequester, use or disclose the information until the claim is resolved. This includes a
restriction against presenting the information to the court for a determination of the claim.”

1 ~~Material, including the release of such technical data to foreign persons or nationals in the United States or~~
2 ~~elsewhere. The Producing Party shall be responsible for identifying any such controlled technical data, and~~
3 ~~the Receiving Party shall take measures necessary to ensure compliance.]~~

4 **14.414.3** **Filing Protected Material.** Without written permission from the Designating
5 Party or a court order secured after appropriate notice to all interested persons, a Party may not file
6 in the public record in this action any Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
8 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
9 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
10 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
11 to protection under the law. If a Receiving Party's request to file Protected Material under seal
12 pursuant to Civil Local Rule 79-5 is denied by the court, then the Receiving Party may file the
13 Protected Material in the public record pursuant to Civil Local Rule 79-5 unless otherwise instructed
14 by the court.

15 **15.13. FINAL DISPOSITION**

16 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
17 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
18 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
19 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
20 the Protected Material is returned or destroyed, the Receiving Party must submit a written
21 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
22 by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material
23 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
24 abstracts, compilations, summaries or any other format reproducing or capturing any of the
25 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy
26 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
27 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
28 and expert work product, even if such materials contain Protected Material. Any such archival

1 copies that contain or constitute Protected Material remain subject to this Protective Order as set
2 forth in Section 4 (DURATION).

3 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

4 DATED:

5 DATED: December 4, 2024 /s/ Nitoj P. Singh, Dhillon Law Group Inc.

6 Attorneys for Plaintiff National Specialty Pharmacy LLC

7 DATED:

8 DATED: December 4, 2024 /s/ Richard H. Poulsen, Law Office of Richard H. Poulsen

9 Attorneys for Defendant Sameer Padhye

10 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

11 DATED: _____

12 [Name of Judge]

13 Hon. Susan van Keulen

14 United States District/Magistrate Judge

1

EXHIBIT A

2

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of _____ **insert formal name of the case and the number and initials assigned to it by the court**. *National Specialty Pharmacy, LLC, v. Padhye et al., United States District Court for the Northern District of California, Case No. 5:23-cv-4357-SVK.* I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

14

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

17

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

21

Date: _____

City and State where sworn and signed: _____

24

Printed name: _____
[printed name]

26

Signature: _____
[signature]

27

28